



Town Council Agenda Report

SUBJECT: Resolution

CONTACT PERSON/NUMBER: Bette Stark 797-1089

TITLE OF AGENDA ITEM:

A resolution of the Town of Davie, Florida, authorizing the Town of Davie to approve and execute an agreement with Dina Ayers for preschool programs at Ivanhoe Community Center and Shenandoah Activity Room.

REPORT IN BRIEF:

The Town provides recreational preschool classes at the various facilities in the Town of Davie. Instructional recreation programs such as preschool classes benefit the participants and the Town of Davie. The agreement allows the Instructor to be paid seventy five (75) percent of the fee that is collected from the participant. The Town receives twenty five (25) percent of the fee, which compensates the Town for use of the facilities, overhead and advertising costs for the class. The Instructor collects the entire fee (the checks are made out to the Town) and submits them along with a roster to the Town, after the registration period. The Town then pays the Instructor, on a regular cycle, once the class has started. The preschool instructor has taught for the Town since 1993 and I foresee no problem with this class. This year we will expand the preschool program to include Shenandoah Park Activity Center in addition to Ivanhoe Community Center. The expected payment to the Instructor of \$75,000 requires the contract be approved and signed by the Town Council. The Instructor is providing the certificate of insurance with the Town included as "additional insured".

PREVIOUS ACTIONS: Since 1993, the Davie Parks and Recreation Department has entered into an agreement with Dina Ayers. Dina's contract for FY 99 was approved by R 99-296. This year because she is expanding to two sites, and requires additional instructors, the Town did a formal Request for Proposal RFP B-11-126.

CONCURRENCES: RFP B-11-126

Control #00-1118 to Monroe Kiar, Town Attorney

FISCAL IMPACT:

Has request been budgeted? yes

 If yes, expected cost \$ 75,000

 Account Name: Contractual Services

RECOMMENDATION(S):

Motion to approve resolution.

Attachment(s):

Resolution and agreement.

RESOLUTION _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE TOWN OF DAVIE TO APPROVE AND EXECUTE AN AGREEMENT WITH DINA AYERS FOR PRESCHOOL PROGRAMS AT IVANHOE COMMUNITY CENTER AND SHENANDOAH ACTIVITY ROOM

WHEREAS, the Town is desirous of providing preschool programs at Town owned facilities; and

WHEREAS, the Town wishes to expand this preschool program to include not only the Ivanhoe Community Center, but Shenandoah Park Activity Room; and

WHEREAS, a formal RFP was dissimulated, and Dina Ayers was the only responding bidder; and

WHEREAS, Dina Ayers has been a Preschool Instructor for the Town since 1993; and

WHEREAS, the Instructor's fee is based upon the number of students that register and pay for the class; and

WHEREAS, due to the increased availability of locations on a Townwide basis and the popularity and quality of instruction, the Instructor will be compensated 75% of the class fee, not to exceed \$75,000; and

WHEREAS, the Town has verified Dina Ayers's qualifications, experience and capability to perform fully the requirements for such a program, and has determined that Dina Ayers has the necessary staff with expertise, skills and capabilities to provide the required services; and

WHEREAS, this agreement has been reviewed by the Town Attorney; and

WHEREAS, Town and Preschool Instructor Dina Ayers wish to enter into this Agreement to outline the parties' responsibilities for the use of the Town's facilities during this proposed preschool program; and

WHEREAS, after review, the Town Council wishes to authorize the Mayor to approve an agreement with Dina Ayers for preschool programs.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council of the Town of Davie hereby approves an agreement

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2000.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2000.

AGREEMENT BETWEEN THE TOWN OF DAVIE
AND DINA AYERS RELATING TO
JOINT RECREATIONAL PRESCHOOL PROGRAMMING

THIS AGREEMENT, made and entered into this 5th day of December, 2000, by and between:

Town of Davie, Florida
a municipal corporation
6591 Orange Drive
Davie, Florida, 33314
(hereinafter referred to as "TOWN")

AND

Dina Ayers
4740 SW 12 Place
Deerfield Beach, FL 33442
(hereinafter referred to as "INSTRUCTOR")

WITNESSETH

WHEREAS, the Town is desirous of providing preschool programs at Town owned facilities; and

WHEREAS, the Town wishes to expand this preschool program to include not only the Ivanhoe Community Center, but the Shenandoah Park Activity Room; and

WHEREAS, a formal RFP was dissimulated, and Dina Ayers was the only responding bidder; and

WHEREAS, Dina Ayers has been a Preschool Instructor for the Town since 1993; and

WHEREAS, the Instructor's fee is based upon the number of students that register and pay for the class; and

WHEREAS, due to the increased availability of locations on a Townwide basis and the popularity and quality of instruction, the Instructor will be compensated 75% of the class fee, not to exceed \$75,000; and

WHEREAS, the Town has verified Dina Ayer's qualifications, experience and capability to perform fully the requirements for such a program, and has determined that Dina Ayers has the necessary staff with expertise, skills and capabilities to provide the required services; and

WHEREAS, this agreement has been reviewed by the Town Attorney; and

WHEREAS, Town and preschool instructor Dina Ayers wish to enter into this Agreement to outline the parties' responsibilities for the use of the Town's facilities during this proposed preschool program.

1. The term of this agreement shall be for the period of one (1) year commencing on December 5, 2000 with the option to extend for four (4) additional one (1) year terms by mutual written agreement of both parties. During any period of extension, all terms, conditions and specifications of the original agreement shall remain unless amended by written agreement by the parties adopted with the same formality as the original.

2. JOINT RECREATION PROGRAMS:

2.1 Town and Instructor agree to offer a joint recreational preschool program which will include, but not be limited to the following days, times, and locations:

Preschool Programs /School Year:

Ivanhoe Community Center, 6101 SW 148 Avenue, Davie
Monday through Friday 9:00 a.m. to 12 noon

Shenandoah Park Activity Room, 14452 Shenandoah Parkway
Monday through Friday, 9:00 a.m. to 12 noon

*Closed holidays and election days, if facility is being used for voting.

Preschool Program/Summer

Ivanhoe Community Center, 6101 SW 148 Avenue, Davie
Monday through Friday 9:00 a.m. to 12 noon

**Note: Shenandoah Park Activity Room is not available in the summer.

3. DUTIES OF DINA AYERS, PRESCHOOL INSTRUCTOR:

3.1 Development and Implementation of Recreational Preschool Programs:

The Instructor shall formulate, implement, direct, manage and control a complete and full service recreation preschool program for preschool age children and special populations. The duties of the Instructor pertaining to these programs are as follows:

3.1.1 Organize and supervise recreational preschool program as defined in Paragraph 2.1 of this Agreement. A minimum number of twelve (12) registered participants is required to commence program.

3.1.2 Use Instructor's best efforts to promote the programs outlined in Section 2, and further endeavor to heighten public interest and an awareness of these activities through advertising.

3.1.3 Select, hire and employ at Instructor's sole expense, all instructors, assistants and staff necessary to Instructor's performance of duties and obligations under the terms of this Agreement provided, however, that all teaching staff shall be over the age of eighteen (18) years old. Subcontractors must be certified. None of the employees of Dina Ayers shall be deemed employees or agents of the Town of Davie for any purposes whatsoever. The Instructor is acting as an independent contractor with regard to this license and no agency relationship is created between the Instructor and the Town by virtue of this agreement.

3.1.4 Manage, control and supervise all instructors, assistants and staff employed by Dina Ayers.

3.1.6 Allow Dina Ayers's name to be used for the promotion of these programs in the Town of Davie, by the Town of Davie.

3.1.7 Maintain records and accounts of all transactions that result from doing business pursuant to this Agreement for a period of three (3) years. Such records shall include daily attendance and enrollment records, as well as, financial records. Such records shall be kept so as to satisfy standard bookkeeping requirements. Such records shall be made available to the Town for inspection, review and auditing within ten (10) calendar days written notice from Town. Notwithstanding the provisions set forth in this paragraph, it is agreed that the Instructor will cooperate in all respects with the Town with regard to compliance with the public records law of the State of Florida.

3.1.8 Maintain all necessary licenses and permits, including but not limited to HRS licenses, if applicable as required by law.

3.1.9 Instructor will provide the Florida protective services background check on HRS Form 1651 for all employees.

3.1.10 Supervise and be responsible and legally liable for the safety and conduct of all participants at any event or activity conducted by Instructor and its agents, volunteers or employees engaged in the performance of Instructors duties under this Agreement. Copy of license will be given to the Town of Davie.

3.1.11 We do not permit any signs or advertising at any Town facility unless specifically approved in writing by the Parks and Recreation Director.

3.1.12 Perform all tasks which are reasonably necessary to be done in order to accomplish the work and objectives as otherwise provided for under this Agreement.

3.1.13 Instructor shall provide all preschool program supplies, play equipment, crafts, games and materials.

3.1.14 The Instructor shall sign out any Town of Davie equipment and shall return it in good condition.

3.1.15 All dates, times and locations must be approved by the Parks and Recreation Director prior to Instructor commencing any activities under this Agreement.

3.1.16 Notify the Parks and Recreation Director and all registered participants immediately if the Preschool Program is to be canceled in accordance with the provisions of this Agreement.

3.1.17 Insure that all facilities are kept free of litter and debris during and immediately after their use under this Agreement.

3.1.18 Instructor shall comply with the Drug Free Workplace Act.

3.2 Dina Ayers's Duty to Inspect and Make Safe:

3.2.1 The Instructor shall conduct a thorough examination and inspection of the premises and equipment to identify any unsafe condition or defect prior to the commencement of any of its duties, operations and services under this Agreement. The Instructor will inform the

3.2.2 If, in the course of its use and/or operations, the Instructor or any agent, representative, employee or volunteer of the Instructor becomes aware or should become aware of any dangerous condition in or on the premises or equipment, the Instructor or its agents, representative, employee or volunteer shall immediately notify the Recreation Supervisor or other Town authorized designee of such dangerous condition and either immediately correct the dangerous condition, or cease operations so as not to endanger persons or property in the vicinity of the premises or equipment.

4. REGISTRATION:

4.1 The Instructor shall handle the registration process, including the collection of fees. All participants are required to complete the Town of Davie Parks and Recreation registration form. The Instructor shall bring to the Parks and Recreation Department all completed registration applications and fees.

5. FEES:

5.1 The preschool program fee will be \$120 for three mornings per week program and \$100 per week for two mornings per week program. Scholarships are provided based on financial need.

5.2 All checks shall be payable to the Town of Davie. The remuneration to the Town of Davie for the preschool program will be 25%.

5.3 The Instructor will issue registration applications and attendance sheets for the month with an invoice summarizing the total number of participants attending each week by the 15th of the following month.

5.4 Penalty for late payment. In the event the Instructor fails to submit registration fees to the Town as required in article 5.3, hereunder within five (5) days of the due date, there shall be added to such payment a late charge of \$50, and interest at the highest rate allowed by law until the payment is brought up to date.

5.5 It will be the responsibility of the Instructor to collect any outstanding fees. If a check is returned for any reason, the participant MUST pay in cash for all future payments.

5.6 The Instructor will be required to provide one (1) scholarship per fifteen (15) registrations for any Davie children that meet the Federal Hot Lunch Program Guidelines and cannot afford the cost of the Preschool Program.

6. ADVERTISING AND PROMOTION:

6.1 The Instructor may use advertising in promoting the programs at the assigned Town facilities. The Instructor may specifically use the name of those Town facilities provided that when so doing they are identified as Town of Davie Parks and Recreation facilities. The cost of all advertising promulgated by the Instructor shall be paid by the Instructor and approved in writing by the Parks and Recreation Director before publication.

6.2 Town also reserves the right to advertise and promote the programs provided for

The Town of Davie will advertise the preschool program in the Davie Update (sent to Davie residents).

7. PREMISES:

7.1 All Town premises are provided in "as is" condition. Town disclaims all representations and warranties, express and implied, as to the condition of the premises and equipment or the use and occupancy authorized other than those contained in this agreement.

8. TOWN FACILITIES:

8.1 DESCRIPTION OF TOWN FACILITIES: The programs will be held at Ivanhoe Community Center, 6101 SW 148 Avenue, Davie, Florida and Shenandoah Park Activity Room, 14452 Shenandoah Parkway, Davie, Florida.

8.2 USE OF TOWN'S FACILITIES:

Town agrees to allow the Instructor to use the facilities for activities upon the following terms and conditions:

(a) Each use shall be at mutually agreeable times and days with said agreement not unreasonably withheld. Agreement as to use shall be between Town's Parks and Recreation Director or his/her authorized designee and Dina Ayers, Instructor, or his/her authorized designee. The Instructor shall execute the standard Town Facility Use Permit form prior to each use.

(b) Town shall provide lighting, air conditioning, heating and water for ordinary purposes, but for no other purposes. Town will also provide athletic fields for the various types of sports, based upon availability. The Town will provide one (1) kitchen cabinet for storage at both sites, and a storage closet at Ivanhoe Community Center.

(c) Use of Town facilities for the Instructor's programming is specifically conditioned upon the Instructor providing a written designation of the authorized agent who shall be in charge of the activity and who shall supervise preschool participants and invitees while on designated property. Said designation shall be delivered to the Parks and Recreation Director prior to any use.

(d) The Instructor shall require its instructors, agents, students and invitees to follow all rules and regulations for the use of parks and park property as promulgated by Town and as set forth in Section 16.3 of Town's Municipal Code.

(e) Town and its officers, agents and employees engaged in the operation, maintenance and repair of Town's facilities designated herein shall have the right, at any time, to enter upon and have free access to any and all parts of the premises used pursuant to this Agreement.

(f) The Town of Davie reserves the right to cancel a permit with a twenty four (24) hour notice to the permit holder with the exception of emergencies and/or acts of God.

8.3 DINA AYERS DUTY TO INSURE TOWN FACILITIES:

8.3.1 Dina Ayers shall maintain for the full term of this Agreement, insurance which must

Insurance requirements are as follows:

1. Worker's Compensation & Employer's Liability Insurance

Limits: Worker's Compensation	Statutory
Employer Liability	\$100,000 each accident
Disease	\$500,000 (policy limit)
Disease	\$100,000 (each employee)

2. Commercial General Liability Insurance - coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for:

Premises/Operations
Products/Completed Operations
Contractual Liability
Independent Contractors

3. Business Automobile Liability Insurance - coverage shall provide minimum limits of liability of \$1,000,000 per occurrence Combined Single Limit for Bodily Injury and Property Damage. This shall include coverage for owned autos, hired autos and non-owned autos.

Insurance must be furnished to the Town's Purchasing Division and notification received of its approval by the Town's Risk Manager PRIOR TO THE COMMENCEMENT of any work. Failure to do so will result in the recommendation to terminate the contract immediately. The Town will be given 15 days written notice of any cancellation or material change in any policy.

8.3.2 No operations under this Agreement shall be commenced until the required certificate of insurance naming the Town of Davie as additionally insured has been received and approved by the Administrative Services Department.

8.4 INDEMNITY/HOLD HARMLESS AGREEMENT: The Instructor agrees to protect, pay defense costs, indemnify and hold harmless the Town of Davie and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney fees, in connection with or arising directly or indirectly out of the work agreed to be performed by the Contractor under the terms of the agreement. Without limiting the foregoing, any and all such claims, suits, or other actions, relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violation of any applicable statute, ordinance, administrative order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder, excluding any gross negligence or intentional act of the Town of Davie. Notwithstanding the provisions herein, the Town of Davie does not waive any rights to sovereign immunity provided by law.

9. PROTECTION OF PUBLIC SAFETY:

9.1 The Instructor shall exercise reasonable care and precaution at all times for the protection of persons and property on the premises provided under this Agreement. Safety provisions of all applicable laws and ordinances shall be strictly observed. Town reserves the right to expel any person from municipal property who is causing a disturbance, is conducting themselves in violation of Town rules, regulations, ordinances or whose conduct

10.1 The Instructor represents that each staff member hired by the Instructor and working at and under the direction and supervision shall also have sufficient experience and/or education to provide proper supervision and instruction to persons of various ages and skill levels.

11. TERMINATION:

11.1 Each party to this Agreement shall have the right to terminate this Agreement, without cause, by furnishing ninety (90) calendar days advance written notice to the other party.

11.2 Each party to this Agreement shall have the right to terminate this Agreement, with cause, by furnishing five (5) calendar days advance written notice to the other party.

12. MODIFICATION AND WAIVER:

12.1 This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. Modification to this Agreement can only be made in writing and by execution of both parties. Reference to the Agreement shall be deemed to include any duly executed modification or amendment. The failure of a party to insist on strict performance of any of the covenants of this Agreement shall not be construed as a waiver or relinquishment for the future of any covenant, term, condition or election but the same shall continue and remain in full force and effect.

13. ASSIGNMENT:

13.1 This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered, under any circumstance without prior written consent from the other contracting party.

13.2 This agreement is for the benefit of the executing parties and is not to provide any rights to third parties as third party beneficiaries.

14. NOTICE:

14.1 Notices required by this Agreement shall be deemed delivered upon mailing by certified mail, return receipt requested, to the following persons and addresses:

AS TO TOWN: Sharon Kent
Parks and Recreation Director
6901 Orange Drive
Davie, Florida 33314

AS TO INSTRUCTOR
Dina Ayers
4740 SW 12 Place
Deerfield Beach, FL 33442

15. GOVERNING LAW AND VENUE:

16.1 If any part of this Agreement is found to be in conflict with applicable laws, such part shall be null and void insofar as it is found in conflict with the laws of the State of Florida, but the remainder of the Agreement shall be and remain in full force and effect.

17. LICENSE NOT A LEASE:

17.1 This Agreement shall not be deemed to be a lease of any facilities, the use of which is permitted hereunder, but rather a license to use and occupy the respective premises under the terms and conditions stated herein.

18. NON-DISCRIMINATION:

18.1 The Instructor shall comply with Title I and Title II of the Americans with Disabilities Act regarding non-discrimination on the basis of disability in employment and the provision of services, and further shall not discriminate against any employee or applicant for employment because of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or disability.

18.2 No persons, on the grounds of race, age, religion, color, gender, sexual orientation, national origin, marital status, political affiliation or disability shall be excluded from participation, be denied the benefits of, or be otherwise subjected to discrimination in the use of said materials or offering of services by the Instructor.

IN WITNESS WHEREOF, the parties hereto have executed this Reciprocal Use Agreement the day and year first written above.

DINA AYERS

TOWN OF DAVIE, FLORIDA

DINA AYERS

BY:_____
MAYOR

ATTEST:

TOWN CLERK

STATE OF FLORIDA)
) ss.
COUNTY OF BROWARD)

DINA AYERS

COUNTY OF BROWARD) ss.
)

I HEREBY CERTIFY, that on the _____ day of _____
2000, personally appeared before me, an officer duly authorized to administer oaths and take
acknowledgements, Dina Ayers, signed this Agreement on the _____ day of, 2000.

WITNESSETH my hand and official seal at _____,
Broward County, Florida this _____ day of _____, 2000.

My Commission Expires: _____
NOTARY PUBLIC, State of Florida